

**Notice of Allowability**

Application No.

10/682,455

Applicant(s)

KOWALCZYK ET AL.

Examiner

Art Unit

Michael C. Henry

1623

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 02/02/05.
2. ☒ The allowed claim(s) is/are 1-13 and 16-22. These claims are renumbered 1-20, respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>02/02/05</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                               | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

***EXAMINER'S AMENDMENT/REASONS FOR ALLOWANCE***

Applicant's amendments and arguments, see Remarks, pages 8-10, filed 02/02/05, with respect to claim 2 have been fully considered and are persuasive. The 103 rejection of claim 2 has been withdrawn.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edward Meilman(Reg # 24,735) on 4/13/05.

The application has been amended as follows:

In claim 2, line 2, the phrase "according to claim 1," has been inserted between the word "nutrient" and "wherein".

In claim 12, line 5, the phrase "or another sugar alcohol or sugar alcohol mixture," has been deleted.

The following is an examiner's statement of reasons for allowance: The examiner has found claims 1-13 and 16-22 to be unobvious over the prior art of record to be allowable over the prior art of record. The present invention relates to a method of production of an isomaltulose-containing enteral nutrient including the steps of: (a) providing the starting components water, fat, at least one nitrogen-containing component, and carbohydrate with the inclusion of isomaltulose, and (c) pasteurizing the starting components for 10-30 seconds at temperatures  $\geq$  120 °C, wherein before or after pasteurizing the starting components are homogenized in a

Art Unit: 1623

method step (b).” The very relevant prior art documents (JP 01191646 A) to this invention disclose a method of production of an isomaltulose-containing enteral nutrient including the steps of providing the starting components water, fat, at least one nitrogen-containing component, and carbohydrate. However, though the method of the present invention (like that of the prior art document) also relates to the production of an isomaltulose-containing enteral nutrient, the prior art document does suggest nor teach the pasteurizing and homogenizing of said nutrient, and it is neither obvious to pasteurize or homogenize said nutrient especially at the specific claimed time and temperatures.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8:30 am to 5:00 pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.


Application/Control Number: 10/682,455

Page 4

Art Unit: 1623

MCH

April 15, 2005.



ELVIS O. PRICE, PH.D.  
PRIMARY EXAMINER